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REPORT
No. 97-722

COMPLETED

AVIATION INSURANCE PROGRAM

AUGUST 10, 1982.—Ordered to be printed

Mr. MINETA, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5930]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5930) to extend the aviation insurance program for 5 years, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That the last sentence of section 303(b)(1) of the Independent Safety Board Act of 1974 (49 U.S.C. 1902(b)(1)) is amended to read as follows: "At any given time, no less than three members of the Board shall be individuals who have been appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.". The amendment made by the preceding sentence shall not preclude the reappointment of any individual serving as a member of the Board on the date of enactment of this Act.

SEC. 2. Section 306 of the Independent Safety Board Act of 1974 (48 U.S.C. 1905) is amended in subsection (a) by striking "pursuant to subsection (b)" and substituting "pursuant to subsection (b) or (c)" and by adding at the end thereof the following new subsection:

"(c) COCKPIT VOICE RECORDER.—Notwithstanding any other provision of law, the Board shall withhold from public disclosure cockpit voice recorder recordings and transcriptions, in whole or in part, of oral communications by and between flight crew members and ground stations, that are associated with accidents or incidents in-

vestigated by the Board: Provided, That portions of a transcription of such oral communications which the Board deems relevant and pertinent to the accident or incident shall be made available to the public by the Board at the time of the Board's public hearing, and in no event later than 60 days following the accident or incidents: And provided further, That nothing in this section shall restrict the Board at any time from referring to cockpit voice recorder information in making safety recommendations.".

SEC. 3. Section 1312 of the Federal Aviation Act of 1958 (49 U.S.C. 1542) is amended by striking out "1982" and inserting in lieu thereof "1987".

SEC. 4. (a) Section 408 of the Federal Aviation Act of 1958 is amended to read as follows:

"EMPLOYEE ARRANGEMENTS

"DEFINITIONS

SEC. 408. (a) For purposes of this section—

"(1) the term 'employee' means an employee of an air carrier involved in a qualifying transaction, other than a temporary or part-time employee, who is a member of a craft or class which is subject to the Railway Labor Act (45 U.S.C. 151 et seq.); and

"(2) the term 'qualifying air carrier' means—

"(A) an air carrier providing passenger service with aircraft having a maximum passenger capacity of more than 60 seats,

"(B) an air carrier providing cargo service in foreign air transportation with aircraft having a maximum payload capacity of 18,000 pounds or more, and

"(C) an air carrier providing cargo service in interstate or overseas air transportation with aircraft having a maximum payload capacity of 18,000 pounds or more.

"QUALIFYING TRANSACTIONS

"(b)(1) For purposes of this section, the term 'qualifying transaction' means—

"(A) any consolidation or merger by two or more qualifying air carriers or persons controlling qualifying air carriers of their properties, or a substantial portion thereof (in cases meeting the standards set forth in paragraph (2) of this subsection), into one person for the ownership, management, or operation of the properties previously in separate ownerships, and any acquisition of control in any manner whatsoever of any qualifying air carrier by another qualifying air carrier or by a person controlling another qualifying air carrier;

"(B) any purchase of, lease of, or contract to operate all of the properties, or a substantial portion thereof (in cases meeting the standards set forth in paragraph (2) of this subsection), of any qualifying air carrier by another qualifying air carrier or by a person controlling another qualifying air carrier; and

"(C) any purchase of, lease of, or contract to operate all of the properties, or any acquisition of control in any manner whatsoever, of any direct air carrier which is not a qualifying air car-

rier by a qualifying air carrier or by a person controlling a qualifying air carrier, but only if and when the carrier which is not a qualifying air carrier provides passenger service with any aircraft having a maximum passenger capacity of more than 60 seats or provides cargo service in foreign air transportation with aircraft having a maximum payload capacity of 18,000 pounds or more.

"(2) A transaction described in subparagraph (A) or (B) of paragraph (1) of this subsection involving a substantial portion of the properties of an air carrier shall be a qualifying transaction only if—

"(A) the transaction involves aircraft constituting more than 20 percent of the total number, market value, or lift capacity of aircraft owned by the seller or lessor;

"(B) the transaction involves assets other than aircraft constituting more than 20 percent of the total assets of the carrier selling or leasing properties, or

"(C) the transaction involves any purchase of, lease of, or contract to operate properties which directly or indirectly involves the right to operate any route or other equivalent air carrier market (including, but not limited to, any agreement or understanding not to compete on such route or market), and the Civil Aeronautics Board determines, after notice and an opportunity for hearing, that such transaction would cause widespread impact on the employees of an air carrier involved in the transaction, such that labor protective provisions should be imposed to prevent labor strife and disruption that could impair the continued stabililty and efficiency of the carriers involved.

The Civil Aeronautics Board shall make the determination required by subparagraph (C) not later than 90 days after a request is made in writing, or a court issues an order to the Civil Aeronautics Board, to make such determination. Any transaction which can be a qualifying transaction only under subparagraph (C) shall not take effect before the date on which the Civil Aeronautics Board makes such determination.

"(3) Notwithstanding any other provision of this subsection, no transaction involving only carriers described in subparagraph (C) of paragrpah (2) of subsection (a) of this section shall be a qualifying transaction.

"IMPOSITION OF LABOR PROTECTIVE PROVISIONS

"(c)(1) Except as other wise provided in this section, in the case of any qualifying transaction, the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger, 59 CAB 45, shall apply with respect to the employees of the air carriers who are involved in such transaction.

"(2) Sections 4, 5, 6, 7, 8, 9, and 12 of the Allegheny-Mohawk provisions specified in paragraph (1) of this subsection shall not apply with respect to any qualifying transaction which becomes effective more than five years after the date of enactment of this sentence.

"(3) In the case of any purchase, lease, contract to operate, or acquisition of control described in subsection (b)(1)(C) of this section, the qualifying transaction shall be considered to have become effec-

tive on the date on which service described in such subsection begins, and paragraph (1) of this subsection shall apply only on or after such date.

"(4) Nothing in this section shall preclude any agreement between an air carrier or air carriers (or their assignees or successors in interest) and one or more of the representatives of the employees of such carrier or carriers concerning the manner in which the provisions made applicable by paragraph (1) of this subsection will be implemented, or concerning a limitation on or extension of such provisions. Any such agreement shall apply, in lieu of the provisions made applicable by paragraph (1) of this subsection, with respect to the employees for whom such agreement is made.

"ENFORCEMENT

"(d) The district courts shall have jurisdiction over any action to enforce this section, any arbitration award resulting from the application of this section, and any agreement applicable under subsection (c)(4) of this section, and any action to enforce any labor protective provisions imposed by the Civil Aeronautics Board under section 408 of the Federal Aviation Act of 1958 (as in effect before the effective date of this subsection), any arbitration award resulting from such provisions, and any agreement reached in lieu of such provisions. Any person with standing (including any labor organization representative of such person) may bring any such action in the appropriate district court, determined in accordance with section 1391 of title 28, United States Code, without regard to the amount in controversy.".

(b) Section 409 of the Federal Aviation Act of 1958 is repealed.

(c) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the center heading

"TITLE IV—AIR CARRIER ECONOMIC REGULATION"

is amended by striking out

"Sec. 408. Consolidation, merger, and acquisition of control.
"(a) Acts prohibited.
"(b) Power of Board.
"(c) Interests in ground facilities.
"(d) Jurisdiction of accounts of noncarriers.
"(e) Investigation of violations.
"(f) Presumption of control.
"Sec. 409. Interlocking relationships."

and inserting in lieu thereof

"Sec. 408. Employee arrangements.
"(a) Definitions.
"(b) Qualifying transactions.
"(c) Imposition of labor protective provisions.
"(d) Enforcement.".

(d)(1) Section 1601(a)(3) of the Federal Aviation Act of 1958 is amended to read as follows:

"(3) The authority of the Board under section 408 of this Act is transferred to the Department of Transportation on January 1, 1983.".

(2) Section 1601(b)(1)(C) of the Federal Aviation Act of 1958 is amended by striking out "The authority of the Board under sections

408 and 409 of this Act (relating to foreign air transportation), the" and inserting in lieu thereof "The" and by striking out "sections 408, 409, and" and inserting in lieu thereof "section".

(3) Section 414 of the Federal Aviation Act of 1958 is amended by striking out "408, 409, or".

(4) Section 1010 of the Federal Aviation Act of 1958 is amended by striking out "408, 409, 412," and inserting in lieu thereof "412" and by striking out, "except in the case of an application submitted under section 408 of this Act, the Board shall issue its final order or decision not later than the last day of the sixth month after submission".

(e) This section and the amendments made by this section shall take effect on the date of enactment of this section.

And the Senate agree to the same.

JAMES J. HOWARD,
GLENN M. ANDERSON,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
DON H. CLAUSEN,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
Managers on the part of the House.

BOB PACKWOOD,
HOWARD CANNON,
Managers on the part of the Senate.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5930) to extend the aviation insurance program for five years, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

WAR RISK INSURANCE

House bill

Reauthorizes War Risk Insurance Program through September 30, 1987.

Senate amendment

Same as House bill.

Conference substitute

Same as the House bill.

COCKPIT VOICE RECORDERS

House bill

No provision.

Senate amendment

Provides that, notwithstanding any other provision of the law, the National Transportation Safety Board shall withhold from public disclosure cockpit voice recorder recordings and transcriptions involving flight crew communications that are associated with accidents investigated by the Board. The Board is required to make available to the public those portions of the transcriptions of such communications that the Board deems relevant and pertinent to the accident, at the time of the Board's public hearing on the accident, and in any event no later than 60 days following the accident. In the event that the CVR is not recovered immediately after

the accident, the conferees intend that the Board have 60 days after recovery of the CVR before release. The conferees emphasize that this amendment would not affect the Board's current practice of sharing CVR information with parties to the investigation.

Conference substitute

Same as Senate amendment.

QUALIFICATIONS OF MEMBERS OF THE NATIONAL TRANSPORTATION SAFETY BOARD

House bill

No provision.

Senate amendment

Requires the President to appoint individuals to be members of the National Transportation Safety Board upon the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

Conference substitute

Provides that at any given time no less than three members of the National Transportation Safety Board shall have technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation. Moreover, the conferees believe it would be desirable if future Chairmen of the NTSB possessed these qualifications.

This requirement is not intended to preclude the reappointment of any persons serving as a member of the Board upon the date of enactment.

LABOR PROTECTION PROVISIONS FOR AIRLINE EMPLOYEES

Current law

Two sections of current law affect the authority to impose labor protection provisions. Under section 408 of the Federal Aviation Act of 1958, the CAB has wide discretion to impose such conditions (including labor protection provisions) as it sees fit on certain transactions among air carriers. Under section 1601(a)(3) of the Act, however, this authority, insofar as it relates to interstate and overseas air transportation, is transferred to the Department of Justice on January 1, 1983. This raised a great deal of uncertainty in the aviation community as to how this broad discretion would be applied by a new agency after January 1, 1983.

House bill

The House bill did not address the issue of labor protection provisions for airline employees. Thus the effect of the House bill was to permit the authority to impose such provisions to be transferred to the Department of Justice on January 1, 1983 in accordance with current law.

Senate amendment

The Senate amendment sought to address the uncertainty of how the Department of Justice would apply its discretion in the field of labor protection by repealing the section in existing law which would transfer this authority to the Department of Justice on January 1, 1983 (section 1601(a)(3)). As a result of the amendment, the authority to impose labor protection provisions would remain at the CAB until January 1, 1985 when that agency would be abolished under another provision of existing law. At that time the authority would be transferred to the Department of Justice.

As Senator Kassebaum, the author of the amendment, stated on the floor of the Senate:

> * * * if jurisdiction were transferred to the DOJ, it is not clear whether that agency would or could impose the standard Allegheny-Mohawk merger labor protective provisions which have traditionally been employed by the CAB to prevent labor disruption resulting from work force consolidations. The Board's labor protective provisions have been an integral part of the consolidation process. Until the Congress had had an opportunity to consider fully to what extent labor protective provisions should be required after CAB sunset, it is important that jurisdiction remain at the Board with authority to impose them.

Conference substitute

The conference substitute fulfills the intent of the Senate amendment by spelling out how labor protection provisions are to be applied in the future. The thrust of the conference substitute is to maintain the standard Allegheny-Mohawk merger labor protective provisions in accordance with the Senate amendment.

Specifically, the conference substitute requires that labor protective provisions continue to be imposed in the case of certain qualifying transactions. The labor protective provisions which are to be applied to these transactions are those imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger case, 59 CAB 45, including conforming changes typically made by the Board to tailor these conditions to the various types of transactions which might be involved, such as acquisition of control, or route transfers.

The requirements in the Board's standard labor protective provisions for integration of seniority lists are applicable to qualifying transactions consummated at any time after the effective date. The requirements in the protective conditions for financial benefits to displaced employees or to employees whose compensation is reduced are required only for transactions consummated within five years after the date of enactment.

Labor protective conditions are required for transactions involving two or more qualifying air carriers or persons controlling qualifying air carriers. A qualifying air carrier is (a) an air carrier providing passenger service with aircraft having a maximum passenger capacity of more than 60 seats, (b) an air carrier providing cargo service in foreign air transportation with aircraft having a maximum payload capacity of 18,000 pounds or more, and (c) an air carrier providing cargo service in interstate or overseas air trans-

portation with aircraft having a maximum payload capacity of 18,000 pounds or more. Transactions involving the carriers described in (c) are covered only if a carrier described in (a) or (b) is also party to the transaction.

Qualifying transactions are also covered if the transaction is between an air carrier which is not a qualifying air carrier (such as commuter air carriers operating only aircraft with less than 60 seats) and a qualifying air carrier, only if and when the non-qualifying air carrier begins providing passenger service with aircraft of more than 60 seats, or cargo service in foreign air transportation with aircraft with a maximum payload capacity of 18,000 pounds or more. In these cases labor protective conditions shall apply only on and after the date on which the non-qualifying carrier becomes a qualifying carrier.

The transactions involving qualifying air carriers in which labor protective conditions are required are consolidations, mergers, acquisitions of control, and purchases, leases, or contracts to operate all of the properties of a qualifying air carrier. Cases involving the purchase lease or contract to operate a substantial portion (but not all) of the properties of qualifying air carrier are subject to specified standards. If a transaction involving acquisition of a substantial portion of a carrier's property does not include the right to operate a route, protective provisions are required if the aircraft in a transaction constitutes more than 20 percent of the total number, market value, or lift capacity of aircraft owned by the seller or lessor, or if the non-aircraft assets in the transaction are more than 20 percent of the total assets of the seller or lessor. If in these transactions (i.e. transactions involving acquisition of a substantial portion of a carrier's property where no routes are involved) the foregoing numerical tests are not met, labor protective conditions are not required.

Under these numerical tests, labor protective provisions will be required for certain transactions in which there is a sale or exchange of a substantial portion of a carrier's property and no routes are involved. A majority of the conferees felt that it was desirable to have numerical standards which would give certainty both to airlines and employees so that they could make appropriate contractual and collective bargaining arrangements. Nevertheless, the conferees recognize that Representatives Clausen, Snyder, and Hammerschmidt had and continue to have concerns over the extent to which labor protection provisions as included in the conference substitute change the current CAB policy of considering all these transactions on a case-by-case basis.

In transactions involving the acquisition of a substantial portion of the properties of an air carrier in which the properties involved include the rights to operate routes, the Civil Aeronautics Board is required to determine, after notice and an opportunity for hearing, whether the transaction would cause a widespread impact on the employees of an air carrier involved in the transaction, such that labor protective provisions should be imposed to prevent labor strife and disruptions that could impair the continued stability and efficiency of the carriers involved. The Civil Aeronautics Board is required to make this determination not less than 90 days after a request is filed. The CAB's authority to make these determinations

is transferred to the Department of Transportation on January 1, 1983.

The requirements imposed by the conference substitute are not intended to preclude any agreement between an air carrier and one or more of the representatives of the employees of the carrier concerning the manner in which labor protection provisions will be implemented, or concerning a limitation of or extension of such provisions. Any such agreement shall apply, instead of the standard labor protective provisions, with respect to the employees for whom the agreement has been made.

The Conference substitute terminates the requirement that the Civil Aeronautics Board approve specified transactions involving airlines and other aeronautical interests under section 408 of the Federal Aviation Act of 1958 and the requirement that the CAB approve specified interlocking relationships under section 409 of the Act.

JAMES J. HOWARD,
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